COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 343 of 2003

Alam S/O Wahid R/O Village Bhauri (Beera) P.S. Jwalapur District Haridwar.

…. Appellant.

Versus

1. Judge Family Court Haridwar District Haridwar.
2. Smt. Sahrana D/O Fateh Mohammad, R/O Village Kota, Haridwar District Haridwar, presently residing at Village Ekkarkhurd P.S. Pathri District Haridwar.

… Respondents.

Sri Navneet Kaushik, learned counsel for the appellant.
Sri Vivek Shukla, Adv., learned counsel for the respondent No. 2.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Date August 24, 2006.

This appeal has been preferred under Section 19 of the Family Courts Act 1984 against the judgment and order dated 20-9-2003 passed by the Judge, Family Court Haridwar, in Case No. 137 of 2002, Smt. Sahrana Vs. Alam, whereby the appellant-O.P. was directed to pay the *Mehar* amount of Rs. 25,000/- to the applicant-respondent no. 2.

Relevant facts of the case are that initially the respondent no. 2 filed an application in the Court of Judicial Magistrate, Hardwar, under Section 3/4 of the Muslim Women Protection of Rights on Divorce Act 1986 with a prayer that she is entitled for Rs. 94,400/- from the appellant in respect of Rs. 25,000/- towards Mehar amount, Rs. 8,000/- towards maintenance during *Iddat* period and Rs. 561,400/- towards the value of articles given in the marriage. The case was later-on transferred to the court of respondent no.1. It was alleged in the application that the marriage between the parties was solemnized according to Muslim rites and customs about ten years before. In the

marriage the parents of the bride had given various articles as mentioned in the petition. It was also alleged that after the marriage, the wife was treated with cruelty for demand of dowry. In order to remarry and also for having heavy dowry ultimately she was turned out of house after recital of Talak-Talak-Talak thrice on 4-12-1995. It was alleged that the amount of Mehar was settled in presence of witnesses to the tune of Rs. 25,000/-. The applicant-respondent has claimed total amounts of Rs. 94,400/-. The appellant-O.P. contested the application, admitted the factum of marriage but denied the articles having been received. The Opposite Party husband has stated that the amount of Mehar was fixed to the tune of Rs. 525/- and after the marriage the relations between them were cordial. But subsequently, the wife was found short-tempered lady and she used to quarrel with the appellant-husband. According to the appellant, the allegation for increase of *Mehar* amount to Rs. 25,000/- is cooked up story and this fact has been specifically denied in the objection filed by the appellant before the trial court. It was also alleged that the *Mehar* amount along with Rs. 1000/- as maintenance during *Iddat* period had already been sent by the appellant through money order. It was also alleged that a false case under Section 498-A of the I.P.C. was filed.

Before the trial court, the applicant-respondent no. 2 examined herself and her father as P.W.1 and P.W.2 and the appellant-O.P. examined himself as D.W.1 and witness Wahid as D.W.2. The trial court has held that the dispute between the parties regarding other amounts except that of *Mehar* stood settled before the Court. The only dispute for determination was of the amount of *Mehar,* which was initially fixed at Rs. 525/- at the time of marriage between parties, but the applicant alleged that the same was re-fixed at Rs. 25,000/- in presence of witnesses. The learned Family Court after considering the material on record came to the conclusion that the amount of Mehar was resettled between the parties at Rs. 25,000/- and ultimately, the application of the respondent no.2 was allowed and the appellant was directed to pay the amount of *Mehar,* i.e. Rs. 25,000/- in monthly instalment of Rs. 1,000/- regularly vide order dated 20-9-2003.

In this appeal, the impugned judgment and decree has been assailed mainly on the ground that the trial court erred in believing the statement of the applicant on the point of Mehar amount having been refixed. The finding of the trial court on this count is not based on evidence on record.

We have heard learned counsel for the parities and perused the record including the impugned judgment.

The learned counsel for the appellant vehemently submitted that the factum of Mehar amount having been increased from Rs. 525/- to Rs. 25,000/- has not been established by cogent evidence, therefore, the impugned order is liable to be set aside.

The applicant Shahrana has appeared in the witness box as P.W.1 In her statement on oath, she stated that initially Mehar amount was fixed at Rs. 525/-, which was increased to Rs. 25,000/- after quarrel. In her cross-examination PW 1 has admitted that in the marriage Mehar amount was fixed Rs. 525/-. She also stated that when the Mehar amount was refixed, she does not know whether any witness of marriage was called or not. She stated that at the time of resettlement of Mehar Jakir and Mustafa were present. When the statement of PW 1 is read as a whole, it can safely be inferred that in cross-examination she has given very shaky statement. She has even stated that he did not know with whom the amount of Mehar was settled. She also stated that she was inside the house when the Mehar was resettled. She failed to tell about the date and year when it was refixed. Even the testimony of father of the applicant Fateh Mohammad P.W.2 is not reliable and does not corroborate the testimony of his daughter. P.W.2 has admitted in his cross-examination that the Mehar amount is fixed at the time of marriage only in presence of Kazi, Advocate and two witnesses.

It is pertinent to note that in the application it has been mentioned in paragraph 7 that Mehar amount was fixed at Rs. 525/- at the time of marriage, but the same was increased to Rs. 25,000/- one years after the marriage in presence of witnesses Mustafa and Jakar of the same village and in her oral evidence also P.W.1 has stated that Jakir and Mustafa were the witnesses present at the time when the Mehar amount was refixed, but one of them has been examined before the court below. On the other hand, the appellant has examined himself as D.W.1. The appellant D.W.1 has stated that Mehar amount was never refixed between the parties. Moreover, there is affidavit of Mufti Saleem Ahmad has been filed on the record. In paragraph no.2, it has been stated that the Mehar can be increased by consent of the husband and wife.

While allowing the application of the applicant-respondent no.2, the learned trial court lost sight of the fact that there is positive case of the applicant that the Mehar amount was increased in presence to two witnesses of the village Mustafa and Jakar, and according to the applicant, these two persons were the witnesses of the marriage between the parties; but none of them has been produced before the court to corroborate the testimony of the applicant. There is one more circumstance which goes to the root of the matter. Though the Mehar amount is alleged to have been increased from Rs. 525/- to Rs. 25,000/-, but the date, month and year of re-fixation of Mehar were disclosed by either of the two witnesses examined by the applicant.

In view of the discussion above, we are of the view that the learned Judge, Family Court Hardwar has not decided the issue in the light of the material placed on record regarding resettlement of Mehar amount between the parties. Moreover, no reasoning has been given by the trial Judge in coming to the conclusion that the amount of Mehar was in fact increased to Rs. 25,000/-. It is admitted case of the parties that the amount of Mehar was fixed Rs. 525/- at the time of marriage. The applicant has taken the case that this amount was increased subsequently to Rs. 25,000/-, while according to the

appellant-O.P. there was no occasion to increase the said amount, therefore, undisputedly, the burden to prove that the amount of Mehar was refixed at Rs. 25,000/- from Rs. 525/- was upon the applicant-respondent no.2.

In the result, the appeal is allowed. The impugned order dated 20-9-2003 passed by the Judge, Family Court, Haridwar, is set aside. The case is remanded to the trial court to decide the case afresh and to give a categorical finding on the disputed amount of Mehar, after hearing both the parties in the light of the evidence led by the parties. It is open to the trial court to take additional evidence of the parties for arriving at a just decision.

24-08-2006 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP